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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRANCISCO CALONGE, individually
and as the Successor-in-Interest to
FRANCIS CALONGE, deceased,

Plaintiff,

vs.

CITY OF SAN JOSE, a Municipal
Corporation organized under the laws of
the State of California, EDWARD
CABRONI, an individual, and DOES 1-20,
inclusive,

Defendants.

Case Number:

**COMPLAINT FOR DAMAGES,
DECLARATORY RELIEF, AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff FRANCISCO CALONGE, individually and as the Successor-in-Interest
to THE ESTATE OF FRANCIS CALONGE, (“Plaintiff”) hereby complains against
CITY OF SAN JOSE, a Municipal Corporation organized under the laws of the State of
California, EDWARD CABRONI, an individual, and DOES 1-20, inclusive
 (“Defendants”) and alleges as follows:

///

///

INTRODUCTION

On October 31, 2019, FRANCISCO CALONGE’S son, FRANCIS CALONGE (“DECEDENT”) was followed by and fatally shot by Defendant, EDWARD CABRONI (“Officer Cabroni”) employee of the San Jose Police Department. On October 30, 2019 the San Jose Police Department was alerted by CALONGE’S family that he was missing, mentally unstable, and required psychiatric services. Despite being on notice of Decedent’s mental health condition, Officer Cabroni stalked Decedent like prey, following him while Decedent walked away from Officer Cabroni never once brandishing a weapon or making any threatening gestures towards the officers, leaning against a tree to balance and aiming at Decedent who was over one-hundred (100) feet away, telling his fellow officers to get out of the way, and finally shooting Decedent with an AR-15 (an assault rifle) from and killing him. Officer Cabroni did not fear for his life and brazenly shot Decedent without any de-escalation or any other intervention before he took Decedent’s life.

PARTIES

1. At all relevant times, Decedent FRANCIS CALONGE (“Decedent”), was an individual residing in the City of San Jose, California.

2. Plaintiff, FRANCISCO CALONGE (“CALONGE”), individually and as the successor-in-interest to FRANCIS CALONGE, is domiciled in and was a citizen of the State of California during relevant time periods residing in San Jose, California and is the biological father of Decedent.

3. Defendant, CITY OF SAN JOSE, a Municipal Corporation organized under the laws of the State of California, with the capacity to sue and be sued. The CITY OF SAN JOSE is a Charter City under the laws of the State of California. The department of the CITY OF SAN JOSE includes the San Jose Police Department. Employees of the CITY OF SAN JOSE, have engaged in acts complained of herein pursuant to the policies, practices, and customs of the CITY OF SAN JOSE.

1 4. Defendant, EDWARD CABRONI, an individual, based on information
2 and belief, is domiciled in and was a citizen of the State of California during relevant
3 time periods and is a police officer for the San Jose Police Department.

4 5. Each of the Defendants, their employees and agents, participated
5 personally in the unlawful conduct challenged herein and, to the extent that they did not
6 personally participate, authorized, acquiesced, set in motion, or otherwise failed to take
7 necessary steps to prevent the acts that resulted in the unlawful conduct and the harm
8 suffered by Plaintiff. Each acted in concert with each other. The challenged acts caused
9 the violation of the deceased's rights.

10 **GENERAL ALLEGATIONS**

11 6. On October 31, 2019, FRANISCO CALONGE'S son, FRANCIS
12 CALONGE was fatally shot by Officer Carbroni an employee of the San Jose Police
13 Department ("SJPDP").

14 7. On October 30, 2019 the San Jose Police Department was alerted by
15 Decedent's family that he was missing, mentally unstable, and required psychiatric
16 services.

17 8. When SJPDP received a call about a "man with a gun," matching
18 Decedent's description, SJPDP did not contact a crisis team to assess Decedent's state of
19 mind.

20 9. On the contrary, Officer Cabroni and other SJPDP Officers engaged
21 Decedent immediately yelling instructions to "drop it" (the alleged weapon).

22 10. Decedent made attempt to communicate with SJPDP Officers but was
23 ignored.

24 11. Within minutes of encountering members of the San Jose Police
25 Department, police fatally shot DECEDENT.

26 12. Within those short minutes, San Jose Police Department personnel failed
27 to assess Decedent's mental fitness, nor ascertain whether the object he was holding in
28 his hands was lethal or whether Decedent intended to use the alleged weapon.

1 13. EDWARD CABRONI, a San Jose Police Department officer who shot
2 Decedent, was previously investigated in another fatal officer-involved shooting.

3 14. San Jose Police Department Chief, Eddie Garcia, has made public claims
4 that Decedent was suicidal and intended to be shot by the police.

5 15. This statement is evidence that San Jose Police Department were on notice
6 that DECEDENT required mental health care.

7 16. DECEDENT was unmarried and without issue at the time of his death,
8 leaving his father, FRANCISCO CALONGE, as his successor in interest pursuant to
9 CCP §377.60.

10 17. Plaintiff is informed and believes, and based thereupon alleges that at all
11 relevant times herein mentioned each of the Defendants and Does 1- 20, inclusive, were
12 the agents, servants and/or employees, partner, predecessor-in-interest, successor-in-
13 interest, beneficiary, executor, fictitious business name, trustee, subsidiary,
14 related/affiliated entity, assignee, assignor, legal representative, general administrator,
15 member, co-conspirator, and/or joint venturer or occupied other relationships with each
16 of the other named Defendants and at all times herein mentioned acted within the course
17 and scope of said agency and/or employment and/or other relationship and each other
18 Defendant has ratified, consented to, had actual and/or constructive knowledge of, was
19 bound by, approved or, and/or failed to prevent the acts of their agents, employees,
20 predecessor-in-interest, successor-in-interest, trustees, trustors, and/or representatives,
21 and that each actively, passively, acquiesced, participated in, allowed, aided and abetted,
22 assisted, acted, or failed to act, with one another in the commission of the wrongdoing
23 alleged in this Complaint.

24 18. Whenever in this Complaint an act or omission of a corporation or
25 business entity is alleged, said allegation shall be deemed to mean and include an
26 allegation that the corporation or business entity acted or omitted to act through its
27 authorized officers, directors, agents, servants, and/or employees, acting within the
28 course and scope of their duties, that the act or omission was authorized by corporate

1 managerial officers or directors, and that the act or omission was ratified by the officers
2 and directors of the corporation.

3 **RESPONDEAT SUPERIOR**

4 19. Based upon information and belief, Plaintiff alleges that with respect to
5 Defendants, and each of them, that their capacity is, or may be, that of an
6 employer/employee in relation to the entity Defendant CITY OF SAN JOSE, for which
7 they acted within their capacity and scope as an employee of that corporation or business
8 entity.

9 20. As a result of the tortious conduct perpetrated by Defendant(s)' employee,
10 such employee was acting within the scope of his employment duties and their tortious
11 conduct was therefore imputable to the corporation or business entity Defendant under
12 the doctrine of respondeat superior.

13 21. At the time of the tortious conduct that injured the Plaintiff and
14 DECEDENT, that was committed by the corporation or business entity Defendant(s)'
15 employee, such employee was acting within the scope of their apparent authority, such
16 that the Plaintiff and DECEDENT were justified in relying on the appearance of
17 authority respecting the employee's actions. Such tortious conduct was therefore
18 imputable to the corporation or business entity Defendant(s) under the doctrine of
19 respondeat superior.

20 22. The tortious conduct that was committed by the corporation or business
21 entity Defendant(s)' employee and which injured the Plaintiff and DECEDENT as
22 described herein, was authorized or approved in advance by the corporation or business
23 entity Defendant(s), and thus, such tortious conduct is imputable to the corporation or
24 business entity Defendant(s) under the doctrine of respondeat superior.

25 23. The tortious conduct that was committed by the corporation or business
26 entity Defendant(s)' employee and which injured the Plaintiff and DECEDENT as
27 described herein, subsequently ratified by Defendant(s), and thus, such tortious conduct
28

1 is imputable to Defendant(s) the corporation or business entity under the doctrine of
2 respondeat superior.

3 **JURISDICTION AND VENUE**

4 24. This case concerns issues arising from California state law and the laws of
5 the United States. Thus, pursuant to 28 U.S.C. § 1331 and 1343 this Court has
6 jurisdiction over this matter.

7 25. Since the events giving rise to this action took place in San Jose,
8 California, the Northern District of California is the proper venue pursuant to 28 U.S.C.
9 § 1391(b).

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 **Fourth Amendment – Excessive Force (42 U.S.C. § 1983)**

13 *(Against All Defendants)*

14 26. Plaintiff refers to and incorporates by reference paragraphs 1 through 24
15 above, inclusive, as though set forth in full herein, and alleges this First Cause of Action
16 for Excessive Force (Fourth Amendment and 42 U.S.C. § 1983) as against Defendants
17 CITY OF SAN JOSE, a Municipal Corporation organized under the laws of the State of
18 California, EDWARD CABRONI, an individual, and DOES 1-20, inclusive as follows:

19 27. Defendants used excessive force against Decedent, when they shot him.
20 The unjustified shooting of Decedent by Defendants denied Decedent of his Fourth
21 Amendment rights guaranteed by the United States Constitution, and applied to state
22 actors pursuant to the Fourteenth Amendment, to be secure in his person against
23 unreasonable searches and seizures

24 28. As a direct and proximate result of defendants' conduct as alleged above,
25 and other undiscovered negligent conduct, Decedent was caused to suffer severe pain
26 and suffering and ultimately died and lost earning capacity.

29. EDWARD CABRONI'S conduct was willful, wanton, malicious, and done with a reckless disregard for the rights and safety of Decedent, warranting exemplarity and punitive damages.

30. The Defendants' conduct was excessive and unreasonable when they used deadly force against Decedent, who posed no immediate threat of death or serious bodily injury when Defendant shot him.

31. CITY OF SAN JOSE is vicariously liable for the wrongful acts of EDWARD CABRONI pursuant to section 815.2 of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

32. Plaintiff brings this claim individually and as successors-in-interest to DECEDENT and seek wrongful death damages.

SECOND CAUSE OF ACTION

Fourteenth Amendment – Substantive Due Process (42 U.S.C. § 1983)

(Against All Defendants)

33. Plaintiff refers to and incorporates by reference paragraphs 1 through 32 above, inclusive, as though set forth in full herein, and alleges this Second Cause of Action for Violation of Substantive Due Process (Fourteenth Amendment and 42 U.S.C. § 1983) as against Defendants CITY OF SAN JOSE, a Municipal Corporation organized under the laws of the State of California, EDWARD CABRONI, an individual, and DOES 1-20, inclusive as follows:

34. Defendants' conduct violated Plaintiff, CALONGE'S, cognizable interest guaranteed by the Fourteenth Amendment of the United States to be free from state actions that deprive him of life, liberty, or property as to shock the conscience. This includes, like here, state interference into a person's familial relationship with their son.

1 35. Defendants' conduct further violated Decedent's cognizable interest
2 guaranteed by the Fourteenth Amendment of the United States to be free from state
3 actions that deprive him of life, liberty, or property as to shock the conscience.

4 36. EDWARD CABRONI'S unwarranted, deadly shooting shocks the
5 conscience since Defendants had knowledge of Decedent's mental health issues, prior to
6 shooting Decedent with an indifference to his Constitutional rights and with the intent to
7 harm him unrelated to any law enforcement objective.

8 37. As a direct and proximate result of Defendants' conduct as alleged above,
9 and other undiscovered negligent conduct, Decedent was caused to suffer severe pain
10 and suffering and ultimately died and lost earning capacity.

11 38. Defendants' actions ultimately led to Decedent's death, directly violating
12 Plaintiff's substantive due process rights to be free from unwarranted interference with
13 his familial relationship with Decedent.

14 39. As a direct and proximate result of Defendants' conduct as alleged above,
15 and other undiscovered negligent conduct, Plaintiff has suffered emotional distress,
16 mental anguish, and pain. Further, Plaintiff will be deprived of the life-long love,
17 companionship, comfort, society, and sustenance of Decedent, and will be continued to
18 be deprived for the remainder of Plaintiff's life.

19 40. The Defendants' conduct was excessive and unreasonable when they used
20 deadly force against Decedent, who posed no immediate threat of death or serious bodily
21 injury when Defendant shot him.

22 41. CITY OF SAN JOSE is vicariously liable for the wrongful acts of
23 EDWARD CABRONI pursuant to section 815.2 of the California Government Code,
24 which provides that a public entity is liable for the injuries caused by its employees
25 within the scope of the employment if the employee's act would subject him or her to
26 liability.

27 42. Plaintiff brings this claim individually and as successors-in-interest to
28 DECEDENT and seek wrongful death damages.

THIRD CAUSE OF ACTION

Battery – Wrongful Death

(Against All Defendants)

43. Plaintiff refers to and incorporates by reference paragraphs 1 through 42 above, inclusive, as though set forth in full herein, and alleges this Third Cause of Action for Battery (Wrongful Death) as against Defendants CITY OF SAN JOSE, a Municipal Corporation organized under the laws of the State of California, EDWARD CABRONI, an individual, and DOES 1-20, inclusive as follows:

44. EDWARD CABRONI, while on the clock as a police officer for the CITY OF SAN JOSE, acting within the course and scope of his duties intentionally shot Decedent. EDWARD CABRONI had no legal justification to use such excessive force against Decedent, as the EDWARD CABRONI'S shot ultimately killed Decedent.

45. As a direct and proximate result of Defendants' conduct as alleged above, and other undiscovered negligent conduct, Decedent was caused to suffer severe pain and suffering and ultimately died and lost earning capacity. Further, Plaintiff has suffered emotional distress, mental anguish, and pain. Consequently, Plaintiff will be deprived of the life-long love, companionship, comfort, society, and sustenance of Decedent, and will be continued to be deprived for the remainder of Plaintiff's life.

46. CITY OF SAN JOSE is vicariously liable for the wrongful acts of EDWARD CABRONI pursuant to section 815.2 of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

47. EDWARD CABRONI'S conduct was willful, wanton, malicious, and done with a reckless disregard for the rights and safety of Decedent, warranting exemplarity and punitive damages.

48. Plaintiff brings this claim individually and as successors-in-interest to DECEDENT and seek wrongful death damages.

FOURTH CAUSE OF ACTION

Negligence—Wrongful Death

(Against All Defendants)

49. Plaintiff refers to and incorporates by reference paragraphs 1 through 48 above, inclusive, as though set forth in full herein, and alleges this Fourth Cause of Action for Negligence (Wrongful Death) as against Defendants CITY OF SAN JOSE, a Municipal Corporation organized under the laws of the State of California, EDWARD CABRONI, an individual, and DOES 1-20, inclusive as follows:

50. Defendants have a duty to use reasonable care to prevent harm or injury to others. This includes using appropriate tactics, giving appropriate commands, giving warnings, and not using any force unless necessary, unless less than lethal options, only using deadly force as a last resort.

51. Defendant, here, breached that duty, when Defendant failed to attempt to de-escalate the situation, and decided to shoot Decedent, despite the fact that they were aware of his mental health conditions. Additionally, Decedent did not pose an imminent danger to Defendant, showing the unreasonableness in Defendant's decision to intentionally shoot and kill Decedent.

52. As a direct and proximate result of Defendants' conduct as alleged above, and other undiscovered negligent conduct, Decedent was caused to suffer severe pain and suffering and ultimately died and lost earning capacity. Further, Plaintiff has suffered emotional distress, mental anguish, and pain. Consequently, Plaintiff will be deprived of the life-long love, companionship, comfort, society, and sustenance of Decedent, and will be continued to be deprived for the remainder of Plaintiff's life.

53. CITY OF SAN JOSE is vicariously liable for the wrongful acts of EDWARD CABRONI pursuant to section 815.2 of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

1 54. Plaintiff brings this claim individually and as successors-in-interest to
2 DECEDENT and seek wrongful death damages.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of California Civil Code § 52.1**

5 *(Against All Defendants)*

6 55. Plaintiff refers to and incorporates by reference paragraphs 1 through 48
7 above, inclusive, as though set forth in full herein, and alleges this Fifth Cause of Action
8 for Violation of Section 152 of the California Civil Code against Defendants CITY OF
9 SAN JOSE, a Municipal Corporation organized under the laws of the State of California,
10 EDWARD CABRONI, an individual, and DOES 1-20, inclusive as follows:

11 56. Based on information and belief, when Defendant shot Decedent and
12 killed him, Defendant attempted to and did interfere by threat, intimidation, or coercion,
13 with the exercise of the right to due process, to be free from state actions that shock the
14 conscience, and to life, liberty, and property.

15 57. Based on information and belief, Defendant intentionally deprived
16 Decedent from exercising his civil rights, to retaliate against him for invoking such
17 rights, or to prevent him from exercising such rights, which he was entitled to.

18 58. As a direct and proximate result of Defendants' conduct as alleged above,
19 and other undiscovered negligent conduct, Decedent was caused to suffer severe pain
20 and suffering and ultimately died and lost earning capacity. Further, Plaintiff has
21 suffered emotional distress, mental anguish, and pain. Consequently, Plaintiff will be
22 deprived of the life-long love, companionship, comfort, society, and sustenance of
23 Decedent, and will be continued to be deprived for the remainder of Plaintiff's life.

24 59. EDWARD CABRONI'S conduct was willful, wanton, malicious, and
25 done with a reckless disregard for the rights and safety of Decedent, warranting
26 exemplarity and punitive damages.

27 60. CITY OF SAN JOSE is vicariously liable for the wrongful acts of
28 EDWARD CABRONI pursuant to section 815.2 of the California Government Code,

1 which provides that a public entity is liable for the injuries caused by its employees
2 within the scope of the employment if the employee's act would subject him or her to
3 liability.

4 61. Plaintiff brings this claim individually and as successors-in-interest to
5 DECEDENT and seek wrongful death damages and attorney's fees.

6 **PRAYER FOR RELIEF**

7 The Plaintiff hereby prays for judgment against Defendants the CITY OF SAN
8 JOSE, EDWARD CABRONI, and DOES 1-20 inclusive, and each of them, as follows:

- 9 A. For compensatory damages, in an amount according to proof;
10 B. For punitive damages, in an amount according to proof;
11 C. For statutory damages, in an amount according to proof;
12 D. For interests;
13 E. For reasonable attorneys' fees;
14 F. For costs of suits; and
15 G. For any other such relief the Court may deem proper.

16 **DEMAND FOR JURY TRIAL**

17 The Plaintiff FRANCISCO CALONGE hereby demands a trial by jury in this
18 matter.

19 Dated: January 6, 2021

HEIT LAW GROUP, P.C.

20
21 By: BMB
22 Brandon M. Banks, Esq.
23 *Attorney for Plaintiff,*
24 *Francisco Calonge*
25
26
27
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FRANCISCO CALONGE, individually and as the Successor-in-Interest to FRANCIS CALONGE, deceased,

(b) County of Residence of First Listed Plaintiff

SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brian M. Heit, HEIT LAW GROUP, P.C. 340 South Lemon Avenue, Suite 8933 Walnut, CA 91789, Telephone (310) 744-5227

DEFENDANTS

CITY OF SAN JOSE, a Municipal Corporation etc.; EDWARD CABRONI, an individual,

County of Residence of First Listed Defendant

SAN JOSE

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1

U.S. Government Plaintiff

3

Federal Question (U.S. Government Not a Party)

2

U.S. Government Defendant

4

Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF

DEF

Citizen of This State

1

1

2

2

Citizen of Another State

2

2

3

3

Citizen or Subject of a Foreign Country

3

3

PTF

DEF

Incorporated or Principal Place of Business In This State

4

4

5

5

Incorporated and Principal Place of Business In Another State

5

5

6

6

Foreign Nation

6

6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT

110 Insurance

120 Marine

130 Miller Act

140 Negotiable Instrument

150 Recovery of Overpayment Of Veteran's Benefits

151 Medicare Act

152 Recovery of Defaulted Student Loans (Excludes Veterans)

153 Recovery of Overpayment of Veteran's Benefits

160 Stockholders' Suits

190 Other Contract

195 Contract Product Liability

196 Franchise

REAL PROPERTY

210 Land Condemnation

220 Foreclosure

230 Rent Lease & Ejectment

240 Torts to Land

245 Tort Product Liability

290 All Other Real Property

PERSONAL INJURY

310 Airplane

315 Airplane Product Liability

320 Assault, Libel & Slander

330 Federal Employers' Liability

340 Marine

345 Marine Product Liability

350 Motor Vehicle

355 Motor Vehicle Product Liability

360 Other Personal Injury

362 Personal Injury -Medical Malpractice

CIVIL RIGHTS

440 Other Civil Rights

441 Voting

442 Employment

443 Housing/ Accommodations

445 Amer. w/Disabilities-- Employment

446 Amer. w/Disabilities--Other

448 Education

PERSONAL INJURY

365 Personal Injury -- Product Liability

367 Health Care/ Pharmaceutical Personal Injury Product Liability

368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

370 Other Fraud

371 Truth in Lending

380 Other Personal Property Damage

385 Property Damage Product Liability

PRISONER PETITIONS

HABEAS CORPUS

463 Alien Detainee

510 Motions to Vacate Sentence

530 General

535 Death Penalty

OTHER

540 Mandamus & Other

550 Civil Rights

555 Prison Condition

560 Civil Detainee-- Conditions of Confinement

FORFEITURE/PENALTY

625 Drug Related Seizure of Property 21 USC § 881

690 Other

LABOR

710 Fair Labor Standards Act

720 Labor/Management Relations

740 Railway Labor Act

751 Family and Medical Leave Act

790 Other Labor Litigation

791 Employee Retirement Income Security Act

IMMIGRATION

462 Naturalization Application

465 Other Immigration Actions

BANKRUPTCY

422 Appeal 28 USC § 158

423 Withdrawal 28 USC § 157

PROPERTY RIGHTS

820 Copyrights

830 Patent

835 Patent--Abbreviated New Drug Application

840 Trademark

880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY

861 HIA (1395ff)

862 Black Lung (923)

863 DIWC/DIWW (405(g))

864 SSID Title XVI

865 RSI (405(g))

FEDERAL TAX SUITS

870 Taxes (U.S. Plaintiff or Defendant)

871 IRS--Third Party 26 USC § 7609

OTHER STATUTES

375 False Claims Act

376 Qui Tam (31 USC § 3729(a))

400 State Reapportionment

410 Antitrust

430 Banks and Banking

450 Commerce

460 Deportation

470 Racketeer Influenced & Corrupt Organizations

480 Consumer Credit

485 Telephone Consumer Protection Act

490 Cable/Sat TV

850 Securities/Commodities/ Exchange

890 Other Statutory Actions

891 Agricultural Acts

893 Environmental Matters

895 Freedom of Information Act

896 Arbitration

899 Administrative Procedure Act/Review or Appeal of Agency Decision

950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1

Original Proceeding

2

Removed from State Court

3

Remanded from Appellate Court

4

Reinstated or Reopened

5

Transferred from Another District (specify)

6

Multidistrict Litigation--Transfer

8

Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

Officer involved shooting -- excessive force

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: 1 Yes 0 No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

1 SAN JOSE

EUREKA-MCKINLEYVILLE

DATE

01/06/2021

SIGNATURE OF ATTORNEY OF RECORD

Barndon M. Banks, Esq.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.